

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

GUIDELINES FOR MEDIATORS

I. INTRODUCTION:

- ▶ As approved mediators for this Court, our mediators have received quality training in the mediation process and have been taught how to conduct a mediation session.
- ▶ Our Court's philosophy for adopting the early setting of mediation sessions in order to address the high costs of litigation anticipates that mediators will use their best facilitative skills and generally utilize an interest-based approach in order to find common grounds for agreement, vent emotions before they fester, and try to reach a resolution before too much money is invested and the parties' legal positions have hardened.
- ▶ These guidelines are to assist the mediator in working under our Local Rules and Standing Orders relating to qualifications and fees and other administrative requirements of the Court.

II. PRE-SESSION ACTIVITIES:

Selection and Arrangements.

- ▶ Typically counsel will receive a list of the Panel of Mediators at the initial Status/Scheduling Conference for the case. They will agree and select a mediator to serve.
- ▶ Counsel will call the mediator to discuss fees and arrange the date, time and place of the session so that they can comply with the local rule and its procedures as well as the Court's Order of Referral (normally part of the Scheduling Order of the case).
- ▶ When the case is referred, counsel are ordered to have mediation within a certain time period or by a certain date. Please work with them toward meeting this deadline.
- ▶ Timing. It is suggested that mediators work with counsel to arrange a date at the "earliest practical time" when certain discovery has occurred that would permit proper case evaluation for settlement purposes.
- ▶ You may wish to send a letter of engagement detailing your personal requests.
- ▶ You may wish to have them verify with you several days prior to the scheduled setting that any absolutely critical discovery has in fact occurred and that the necessary players will be in attendance so that your mediation session can be as meaningful as possible.
- ▶ The place for holding the session should be agreeable and convenient to all parties and the mediator - usually in the office of the mediator, but can be at counsel's office or the federal courthouse (call ahead for Room request.)

Conflicts of Interest:

- ▶ When asked to serve, mediators are required to ascertain to the best of their knowledge whether any conflict of interest exists. The Court expects all mediators serving in its cases to be impartial neutrals. You have an obligation before accepting any case to comply with local rules and orders and disclose any 28 USC § 455 circumstance and be disqualified if necessary. A mediator has a

continuing obligation of disclosure throughout the mediation process.

Fees:

- ▶ Although fee schedules are on file in the Court Clerk's office, you will often need to discuss fees with both counsel and are so authorized by the Court.
- ▶ Fee arrangements are the responsibility of the mediator; however, to encourage mediation for certain litigants who might not otherwise be able to pay or participate, the court encourages each mediator to discuss reduced fees in appropriate cases and accept at least one pro bono mediation per year if asked.
- ▶ Please identify on the Mediation Report form whether pro bono service was given.
- ▶ Remember that the purpose of the mediation program in the Western District is a cost reduction measure to promote earlier resolution of cases and that your fees must be **reasonable**.

Order Appointing Mediator and Setting Mediation:

- ▶ Once the selection and arrangements are made and the Selection and Order form received by the Court, the Order will be entered and filed.
- ▶ Mediators will be faxed/sent a copy of the Selection and Order Appointing Mediator and Setting Mediation thus giving them authority (and immunity) to mediate the case under the local court rule.
- ▶ Other information, e.g. copy of the Appearance Docket Sheet, can be accessed through Pacer available through the Court's website or call the ADR Administrator.
- ▶ If you need actual case pleadings, copies of motions, etc., please ask counsel to provide you with that information.

Continuances:

- ▶ The mediator and counsel may re-schedule sessions within the time frame set by the Court; however, once there is a need to go beyond that time, counsel must apply to the court for a continuance.

Memorandum for Mediation:

- ▶ At least 3 days prior to the scheduled mediation (pursuant to local rule), mediators should receive the Memoranda for Mediation from all parties. If you want a different timing, you will have to schedule that with counsel.
- ▶ It should include the name and role of each person expected to attend, identity of each person with full settlement authority and a concise summary of each parties' claims, defenses, etc. Please let the ADR Coordinator know if this does not occur.

III. THE MEDIATION SESSION:

Authority of Mediator:

- ▶ The Order Appointing Mediator gives the authority to conduct the mediation session.
- ▶ Mediators cannot force settlements, not serve as a judge or arbitrator or render decisions.
- ▶ The mediator is an impartial person whose role is to "facilitate communication between disputing parties to promote understanding, reconciliation and settlement." Otherwise it is the court's understanding that a mediator will conduct the mediation session as he or she has been trained to

do.

Attendance:

- ▶ Attendance of the appropriate participants with settlement authority is one of the basic elements of any successful mediation and is expected as it is with all the Court's other dispute resolution programs.
- ▶ The court has worked with governmental agencies and boards in the past in all our other programs and expect them to operate in a mediation setting much as they would in a Settlement Conference.
- ▶ If any mediator anticipates any problems, discussion prior to the session is recommended so that necessary players are present. The ADR Administrator /Staff Attorney will be able to assist you.

Confidentiality:

- ▶ Mediation is a settlement procedure and entirely confidential and private. The only information concerning the mediation that the court should have is that in the Mediation Report .

IV. CONCLUSION OF THE SESSION - MEDIATION REPORT:

ADR Report - Mediation: IT WILL BE FILED IN THE CASE.

- ▶ Once the session has concluded, **the ADR Report** - mediation, must be promptly submitted.
- ▶ The Report insures that the Court is advised as to the status/disposition of the case, assists in keeping statistics and serves to satisfy the court's order of referral.
- ▶ Please do not include any messages or other information on this Report since it is now a part of the case file. If communication is necessary, please contact the ADR Administrator.

Settlement or Partial Settlement:

- ▶ Please encourage counsel promptly to notify the court and/or file appropriate papers if the case settled or settled in part as to certain claims or parties and could be dismissed. Countless hours of court, judge and staff time not to mention valuable attorney time and time and money of litigants can be saved if prompt notice of settlement is given.

Additional Sessions:

- ▶ Please report any additional sessions whether held within the time ordered by the Court or otherwise on the same report form and return it as soon as possible.

V. OTHER IMPORTANT INFORMATION:

- ▶ **You are now responsible for sending an ADR Report to the Court of any federal court case from this district that you mediate, whether it was court or privately referred.** Frequently the Court is not being advised of settlements in its cases that are privately mediated. It is also advisable for immunity safeguards to have a Selection and Order Appointing signed by the parties and sent to the Court for filing. Thank you for your cooperation.
- ▶ When mediating with the U.S. Attorneys, please be aware that they have certain governmental requirements and fee conditions.

- ▶ Please keep the ADR administration advised of any change of address, telephone number, fee schedule changes etc. We need to keep that information up to date for all Panel Lists/website.

The Court truly appreciates your service. For assistance, please call:

**Ann Dudley Marshall
ADR Administrator and
Settlement Staff Attorney
(405)609-5078**

**Karen Worth,
ADR Coordinator and Deputy Clerk
Office of the Court Clerk
(405)609-5162**